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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/086,627 05/29/98 BOLAND

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EXAMINER

EDELEMAN, B

ART UNIT PAPER NUMBER 3

2757

DATE MAILED:

02/29/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/086,627</b>	Applicant(s) <b>Boland</b>
	Examiner <b>Bradley Edelman</b>	Group Art Unit <b>2757</b>

Responsive to communication(s) filed on May 29, 1998

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claim

Claim(s) 1-13 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-13 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

**-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --**

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## **DETAILED ACTION**

### *Specification*

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the instant case, the phrase "A method and apparatus are disclosed for use on" can be implied and should be changed or removed.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "the computer network" on line 6 of the claim lacks sufficient antecedent basis.

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***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 7, and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sumimoto (U.S. Patent No. 5,522,070), in view of Hauser et al. (U.S. Patent No. 5,889,956, hereinafter “Hauser”).

In considering claims 1 and 11-13, Sumimoto discloses a method, a computer architecture, a computer system, and an article comprising machine executable instructions, for allocating network resources on a computer network, comprising:

means for monitoring at least two nodes on the computer network among at least a first process and a second process for allocation of computer resources on each of the at least two nodes (col. 6, lines 25-32).

However, Sumimoto fails to disclose for the first process, means for setting a minimum resource allocation for the first process on the at least two nodes independent of the computer resources needed by other processes and processes running on the computer network.

Nonetheless, minimum resource allocation in a distributed processing system is well known, as evidenced by Hauser. In a similar art, Hauser describes a system for allocating network resources in computer network, as claimed and as described by Sumimoto, wherein the requesting entities

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specify a minimum resource allocation, which guarantees a minimum allocation of resources for each requesting entity (col. 5, lines 2-5). A person having ordinary skill in the art would have readily recognized the desirability and advantages of allocating a minimum amount of resources for each process, as taught by Hauser, in the distributed processing system taught by Sumimoto, so that important processes can run even when the network is severely congested. Therefore, it would have been obvious to use minimum resource allocation as taught by Hauser, in the system taught by Sumimoto.

In considering claim 2, Sumimoto further discloses the allocation being an allocation of computers and memory space on the network for the first process (col. 17, lines 57-63).

In considering claim 3, Sumimoto further discloses denoting usage of resources as a percentage (col. 16, lines 11-12). Therefore, it would have been obvious to denote the minimum allocation, as taught by Hauser, as a percentage of the resources, so that an increase in the resources available will result in increased allocation for each process.

In considering claim 4, Sumimoto further discloses performing the monitoring step periodically (col. 17, lines 60-63).

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In considering claim 5, Sumimoto further discloses denoting usage of resources as a percentage. Therefore, it would have been obvious to denote the minimum allocation, as taught by Hauser, as a percentage of the resources, so that an increase in the resources available will result in increased allocation for each process. Further, although Sumimoto does not disclose continually monitoring the nodes, it would have been obvious to continually monitor the nodes so that processes would remain optimally allocated at all times, thereby increasing network efficiency.

In considering claim 7, Hauser further discloses setting a maximum resource allocation for at least one process (col. 4, lines 53-56). Given the teaching of Hauser, a person having ordinary skill would have readily recognized the desirability and advantages of including a maximum resource allocation, as taught by Hauser, in the system taught by Sumimoto so that no one process could overwhelmingly occupy the system's resources. Therefore, it would have been obvious to include maximum resource allocation, as taught by Hauser, in the system taught by Sumimoto.

In considering claim 9, Hauser further discloses storing the minimum resource allocation in a storage device (col. 6, line 37). It would have been obvious to store the minimum resource allocation in a storage device so that allocation values can be viewed and manipulated for optimal dynamic system resource allocation.

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In considering claim 10, Sumimoto further discloses monitoring being performed by any of the nodes on the computer network (Fig. 3, Fig. 22, col. 17, lines 57-60, "LM").

6. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sumimoto, in view of Hauser, and further in view of Culbert (U.S. Patent No. 5,838,968).

In considering claim 6, although the combined teaching of Sumimoto and Hauser discloses substantial features of the claimed invention, it fails to disclose redistributing computer resources on the network so that the first processor is provided the minimum resource allocation. Nonetheless, redistributing computer resources in a processing system is well known, as evidenced by Culbert. In a similar art, Culbert discloses a resource allocation system that controls resource availability to multiple tasks, as described by Sumimoto, wherein tasks requiring more resources than are currently available can cause resources to be redistributed on the computer system (col. 9, lines 36-54). Given the teaching of Culbert, a person having ordinary skill would have readily recognized the desirability and advantages of redistributing computer resources, as taught by Culbert, in the resource allocation computer network taught by Sumimoto and Hauser, to allow the most important processes to gain access to resources regardless of potential network congestion. Therefore, it would have been obvious to include redistribution of resources, as taught by Culbert, in the resource allocation system taught by Sumimoto and Hauser.

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In considering claim 8, although the combined teaching of Sumimoto and Hauser discloses substantial features of the claimed invention, it fails to disclose assigning a priority to at least two processes in the system, the second process being assigned a lower priority than the first processing and setting a minimum resource on the at least first and second processes independent of the computer resources needed by other processes on the network, with the exception of the first process. Nonetheless, the use of prioritized resource allocation in a computer system, used in conjunction with a minimum resource allocation for individual processes is well known, as evidenced by Culbert. In a similar art, Culbert discloses a resource allocation system that controls resource availability to multiple tasks, as described by Sumimoto, wherein tasks requiring more resources than are currently available can cause resources to be redistributed on the computer system, according to a priority level (col. 9, lines 16-54). Given the teaching of Culbert, a person having ordinary skill would have readily recognized the desirability and advantages of assigning priority levels to processes, as taught by Culbert, in the resource allocation computer network taught by Sumimoto and Hauser, to allow the more important processes to gain access to resources regardless of potential network congestion. Therefore, it would have been obvious to include prioritization of processes, as taught by Culbert, in the resource allocation system taught by Sumimoto and Hauser.

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*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is (703) 306-3041. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess, can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7201.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3900.

BE

February 23, 2000



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